

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MISSOURI

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CHARLES LEE THORNTON,

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Plaintiff,

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vs.

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No. 4:07-CV-79 CDP

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City of KIRKWOOD,

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Defendant.

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PRESENT: The Honorable Catherine D. Perry, Presiding

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ATTORNEY FOR PLAINTIFF: Plaintiff appears pro se

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ATTORNEYS FOR DEFENDANT: John M. Hessel and Jami L. Boyles

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Rule 16 Conference

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March 30, 2007

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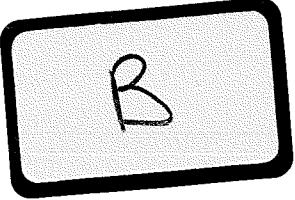
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TERI HANOLD HOPWOOD
Registered Merit Reporter
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

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1 THE COURT: Good morning. We are here in the case
2 of Charles Lee Thornton versus the City of Kirkwood, case
3 number 4:07-cv-79, and Mr. Thornton is here appearing pro se,
4 and representing himself, and the Government -- I mean the
5 defendant is here and it's Mr. Hessel and Ms. Boyles
6 representing the City of Kirkwood.

7 Mr. Thornton, why don't you step up to the lectern and
8 let's go over a couple of things. One, I'd like to talk about
9 your motion for leave to amend your complaint, and then talk
10 to you about the joint proposed scheduling plan that you
11 submitted, but first I'd like to hear from you, anything you'd
12 like to say in response to the -- you filed your motion to
13 amend, and the defendant filed an opposition to that, and
14 rather than waiting for further briefing, do you wish to make
15 any further statements about your motion to amend and why you
16 think you should be able to do that?

17 MR. THORNTON: Yes, Your Honor. I wasn't aware
18 that the defendant had filed their -- I guess their response,
19 but in reference to me filing, the --

20 THE COURT: Wait a minute. They filed it on the
21 26th, and I'm sure they mailed it to you.

22 MR. HESSEL: We did, Your Honor.

23 THE COURT: At your address 351 Attucks Street. Do
24 you read your mail?

25 MR. THORNTON: Yes, Your Honor.

1 motion to amend, and then here is also the memorandum in
2 opposition to your motion to amend.

3 MR. THORNTON: Correct.

4 THE COURT: So they did, you did get it all.

5 MR. THORNTON: I got it all, but I was under the
6 illusion, because it stated that it would not be filed for 21
7 days, that it would not be on record, and therefore, I
8 wouldn't have to respond to it until it was filed, but if
9 you're saying it's filed, I did read it, so I'm aware of it.
10 I had no idea it was filed based on their letter stating that
11 it had not been filed.

12 THE COURT: There is two different things. What
13 they filed, the only thing they have actually filed in the
14 court file is a memorandum opposing your motion to amend. The
15 other thing that they sent you that said they weren't going to
16 file it yet was a proposed Motion for Sanctions, and under the
17 rule, they have to send that to you first to give you a chance
18 to change your mind and withdraw your motion for Leave to
19 amend, and so they have given you that chance. Do you wish to
20 change your mind and withdraw your motion for leave to amend?

21 MR. THORNTON: No, Your Honor.

22 THE COURT: Then tell me why you think you should
23 be able to bring all these charges, and add these other
24 defendants at this point.

25 MR. THORNTON: Well, they were in on my original

1 filing, but the mistake on my part was that it was not
2 written. Now, I did not remove the "et al" from my
3 documentation, the clerk did, and had I known at that time all
4 I needed to do was add the individual defendants instead of
5 stating the City of Kirkwood, et al, unfortunately I was
6 explained later that the "et al" was like a nicety and allowed
7 instead of writing them all the time, only writing "et al."

8 THE COURT: But you didn't say anything about them
9 in your complaint. I've got it right here in front of me, and
10 all it says is you say defendants, plural, city of Kirkwood,
11 and you don't say anything about any other defendants, so even
12 though you've got "et al" in the heading, there is nothing in
13 your complaint that talks about and names all these other
14 people, so how can you say they were in here originally?

15 MR. THORNTON: Because in my understanding of why I
16 wrote, "the city of Kirkwood, et al," the City of Kirkwood is
17 those individuals, it is the Mayor. The City of Kirkwood did
18 not stop me, in my opinion, deny me the right to speak. It
19 was the Mayor and the City Council, and the City itself did
20 not arrest me, the Police Department did, under the authority
21 of the Chief of Police, and then the City Administrator, all
22 of them that were, as far as representing the City of
23 Kirkwood, made that decision, and my mistakenly not writing it
24 on the paper, and the clerk's choice to remove the "et al"
25 before the filing was the mistake. But my intention, and even

1 on the documentation it states the "et al," which I mistakenly
2 did not write the City of Kirkwood and then individually list
3 all the individuals, along with Attorney Hessel, who in my
4 opinion did conspire to stop me from speaking.

5 THE COURT: Okay. Well, your original -- the thing
6 you filed here, we need to know what your case is here that
7 we're talking about, and in the case that you filed, the
8 original complaint, you alleged that on May 18th of 2006, and
9 June 15th of 2006, that you were -- your First Amendment
10 rights were violated because you were not allowed to speak at
11 the meeting. Are you trying to in your proposed amended
12 complaint -- it's a little hard to figure out what you're
13 saying, but you seem to be saying that -- wanting to go back
14 all the way to 2001, or even farther, I'm not sure, and you
15 want to name a whole bunch of other people, and so it's not
16 just adding parties, you're also aiding claims, correct?

17 MR. THORNTON: The parties itself would be on the
18 first part, them denying me to speak. The second part would
19 be adding the claim, yes, Your Honor.

20 THE COURT: That's not what your amended complaint
21 says. So what is it -- tell me what the new complaint is that
22 you're trying to bring.

23 MR. THORNTON: The new complaint is the issue with
24 the city of Kirkwood, which I have proven as far as document
25 fraud in speaking with them at the City Council meeting, one

1 attempt of them denying me to speak, because I believe they
2 are tired of hearing me speak the truth of documentation, and
3 with the filing of the other court issues, and denying to
4 settle with me, or with relationship to their issues of the
5 City of Kirkwood's actions.

6 THE COURT: Well, what is it you think you're suing
7 for? What do you think was done wrong to you and what are you
8 trying to get?

9 MR. THORNTON: Okay. I believe the first issue
10 with the City of Kirkwood, Mayor, City Council, Attorney
11 Hessel being the City Attorney, and the Chief of Police, I
12 believe I was wronged with them denying my First Amendment
13 right to free speech.

14 THE COURT: When did this happen?

15 MR. THORNTON: The two dates --

16 THE COURT: May 18th and June 16th of 2006?

17 MR. THORNTON: Those two occasions, correct.

18 THE COURT: Okay.

19 MR. THORNTON: And the other count was constantly
20 trying to get them to acknowledge the wrong, and now just
21 filing in the court to try to be heard to correct the wrong
22 that was I believe not corrected in the lower court.

23 THE COURT: Explain that. I have no idea what you
24 just said or what that means.

25 MR. THORNTON: I filed in the lower court, and I

1 was denied, and now I'm filing in the federal.

2 THE COURT: I'm not an Appellate Court. This is
3 not the Court of Appeals. The Federal Court does not rule on
4 whether the state courts or municipal courts did the right
5 thing. There is no jurisdiction to do that. Do you
6 understand that?

7 MR. THORNTON: Yes, I thought I had, I thought my
8 federal question was with the lower court. Well, I still
9 understand as far as what you're saying you're not an
10 appellate court for them.

11 THE COURT: There is no tort called refusal to
12 settle. There is no -- you can't sue somebody for not
13 settling a case. It simply is not a cause of action, so I'm
14 going to deny your motion for leave to amend. I think that it
15 is on its face frivolous legally, and I think it is just
16 improper for a whole bunch of reasons. There is no legal
17 basis for it whatsoever, in terms of adding these claims.

18 You admit that it has been -- the issues going back
19 into the prior time have been litigated in the state courts,
20 and you know, you have remedies in the state courts if you
21 think that they did something wrong there, there is appeals
22 and things like that, but this Federal Court is not a Court of
23 Appeals, so we're going to proceed on your original complaint
24 which seeks to recover injunctive relief from the City of
25 Kirkwood to allow you to speak, right? That's what you're

1 asking for in the original complaint?

2 MR. THORNTON: Yes, that's the original complaint.

3 I'm also denied it as far as adding them to the original
4 complaint, the individuals?

5 THE COURT: You have to make some allegations
6 against the individuals, and you haven't done that. You have
7 to show that they individually did something in violation of
8 your constitutional rights, and you're saying that it was the
9 whole city who did it, right?

10 MR. THORNTON: Well, that's where the problem is
11 because I said the city and I did not write the individuals.
12 The City itself didn't.

13 THE COURT: Tell me what each of these people did
14 to you that you think violates your constitutional rights.

15 MR. THORNTON: The Mayor and the City Council did
16 discuss banning me from speaking after I was stopped from
17 speaking at the City Council meetings, along with Attorney
18 Hessel, and therefore, that's why they are together as far as
19 under the umbrella of the City of Kirkwood, but the
20 individuals made the statements in reference to banning me
21 from speaking with Attorney Hessel stating that it can be
22 done.

23 THE COURT: Okay. Mr. Hessel, let me hear your
24 response on this issue of whether he should be able to join
25 the individuals on the limited claims he has brought in the

1 chambers, literally dragging him out of the Council chambers?
2 The answer to that question is of course yes, and that's
3 because he was engaged in disorderly conduct for which he has
4 been found guilty on two separate occasions.

5 Mike Brown, who is the Chief Administrative Officer,
6 was present at the Council meeting, but he took no action
7 whatsoever. The members of the City Council outside of Mayor
8 Swoboda took no action whatsoever, didn't say -- well, I take
9 it back. One Council member did complain about the language
10 that Mr. Thornton was using, but only Mayor Swoboda was the
11 one that stopped him from speaking.

12 As the City Attorney, I took no action whatsoever,
13 other than to represent the City and to advise the City
14 Council as to how they could try to control Mr. Thornton and
15 his behavior at Council meetings.

16 THE COURT: Let me ask you this, and I'll have
17 Mr. Thornton come up and speak in a minute, but this goes to
18 the issue of scheduling. Mr. Thornton did file, as he was
19 required to do, a joint proposed scheduling plan, and as it
20 did comply with the rules, and it did set out the differences
21 in agreement that you all had over the discovery schedule, my
22 question to you though is assuming this case remains as the
23 original complaint reads, in your opinion, is this case ripe
24 for summary judgment now?

25 MR. HESSEL: I would candidly, Judge -- I'm not

1 sure it's ripe for summary judgment because I'm still -- until
2 this morning when you were asking him questions on the record,
3 I was uncertain as to what his actual allegations were. Now
4 that we have a record as to what his contentions are, rather
5 than me taking a deposition, we have it on the record, I
6 believe it is ripe for summary judgment.

7 THE COURT: Okay, Mr. Thornton, come on up and
8 let's talk about this. Your complaint is that on these two
9 occasions, you were not allowed to speak, or they stopped you
10 from speaking.

11 MR. THORNTON: Yes, Your Honor.

12 THE COURT: And what Mr. Hessel is saying is that I
13 shouldn't allow you to add other people first because you
14 don't have any allegations against them, and second, because
15 any amendment would be futile because you were actually
16 convicted of disorderly conduct for both of those occasions.
17 Is that correct?

18 MR. THORNTON: All of it is not correct. What is
19 correct is your last statement is that I was convicted in the
20 municipality and St. Louis County on the disorderly conduct
21 issue, who did separate me speaking and me refusing to leave,
22 so my being found guilty was based on me refusing to leave,
23 not me being denied to speak. They separated it. The same
24 thing that was in the municipality. The Judge in Kirkwood is
25 not even concerned with what I said, but that I refused to

1 the law and see what you can prove, and I can just tell you
2 that you need to read the law. You need to understand what
3 the cases provide, and what there is a legal remedy for.

4 When you file claims such as failure to settle, which
5 just doesn't even exist, that makes the Court wonder whether
6 you're really just playing games with us here because nobody
7 has a duty to settle anything with anybody else. There is no
8 tort of failure to settle. That makes me wonder why you're
9 even here, but you have stated a claim so far, and it's
10 limited to those two incidents of your First Amendment --
11 violations of your First Amendment rights.

12 There is a lot of law on this. You can go to the
13 library and do research. You can also -- if you need to see
14 the local rules, or the Federal Rules of Civil Procedure, they
15 are available on our court's website, and so you can go to the
16 public library if you don't have access to the internet at
17 home and use their computers to access the website or do any
18 other research you need to do.

19 I will send out a case management order that
20 incorporates these deadlines. I may not have been as specific
21 about all of them as I normally would be, but please read the
22 order and it will tell you what you need to know.

23 MR. HESSEL: Can I impose upon you in order to
24 avoid conflict with Mr. Thornton down the road, one thing you
25 did not address was interrogatories. As you know, I proposed

1 wouldn't necessarily have to rely on people's memories.

2 MR. HESSEL: My only problem with that is I think
3 they only keep those tapes for six months. I know that we
4 kept the tapes on May 18th and June 18th. I don't know if we
5 kept recordings beyond six months. They recycle them, as you
6 can imagine, so I don't know what's back there in August,
7 July, June. Obviously, we'll check.

8 THE COURT: Well, what I would expect is that you
9 would, as part of your initial disclosures, produce any that
10 exist, and then we'll go from there. So, I don't think you
11 need to respond. We'll wait and see where we go. But, yeah,
12 I understand that there may be motions related to discovery,
13 but we'll just take that as it comes. Court is in recess.

14 (A recess was taken.)

15

16 REPORTER'S CERTIFICATE

17 I, TERI HANOLD HOPWOOD, RMR, Official Court Reporter
18 for the United States District Court for the Eastern District
19 of Missouri do hereby certify that the foregoing is a true and
correct transcript of the proceedings had in this cause as
same appears from my stenotype notes made personally during
the progress of said proceedings.

20 /S/ Teri Hanold Hopwood, RMR
21 TERI HANOLD HOPWOOD, RMR
22 Official Court Reporter

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